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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/220,986 12/23/98 SCHWARTZ

S	17649-20
EXAMINER	

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HM12/0229

KIARTHORE, G	PAPER NUMBER
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1615
DATE MAILED:

02/29/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 1-20 is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☒ Claim(s) 1-20 is/are objected to.
- _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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DETAILED ACTION

Claim Rejections - 35 U.S.C. § 112

1. **The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

It is unclear what applicant intends to convey by ‘Dead sea salt. Having as active ingredients ----- lipid soluble compound and oils’ in claim 1. Does the composition have lipid soluble compound and oils besides the salt? What is being conveyed by ‘water of crystallization’ as used in the context? Salts such as sodium chloride and potassium chloride have no water of crystallization. Similar is the case with other independent claims.

The examiner suggest ‘comprising’ instead of ‘including’ in claim 3 (or ‘includes’) and in other claims where it is recited.

Is the hydrogenated vegetable oil recited in claim 5 in addition to ‘oils’ recited in claim 1? If so, what does the generic term ‘oils’ in claim 1 includes? (Similar is the case with hydrogenated oil in claim 7).

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Chemical names should be recited in claims 6 and 7. Lipoids in claim 6 has no antecedent basis in claim 1.

What is the distinction between 'oils' in claim 1 and 'sunflower oil' in claim 7? Similarly, what is the distinction between 'aloe Vera' in claim 3 and 'aloe Vera juice' in claim 7.

Claim 8 is confusing. Does the composition in claim 1 comprise 5 % dead sea salt' or the mineral salt contains 5 %? What is the composition of the mineral salts?

What is being conveyed by 'skin tissue within the mouth' in claim 10? Mouth has mucous membrane.

Claim 11 is not further limiting claim 1. Claim 1 already has the limitation of 'lipid soluble component'. What is a solvent component? Solvent for what; the mineral salts?

What is a 'lipophilic product' as recited in claim 12? In what way it is different from the lipophilic components recited in claim 1?

What is a water soluble base as recited in claims 14 and 18? The term 'such as' in these claims is indefinite.

What is being conveyed through claim 15? Isn't dead sea salt water soluble? If so how can salt exist in granular form?

What is being convey by 'selectively to replace in part, or in conjunction with, the mineral salts' as recited in claim 16?

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Claim Rejections - 35 U.S.C. § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1-2, 8, and 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Stavroff (US 5,866,145).

Stavroff discloses compositions containing dead sea salts, an emollient, a skin conditioner and fragrance (note the abstract, and columns 1-2).

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-9, 11-15, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavroff cited above, further in view of Steward (5,922,313) and Eppstein (5,885,593) and Fowler (5,720,961).

Stavroff does not teach instant additives in the skin treatment compositions.

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Steward teaches that the addition of additives such as propylene glycol, aloe and lipomulse are common practice in the art (note the abstract, column 4 and examples).

Epstein teaches that the addition of components such as sun screens, triglycerides (oils), emulsifiers such as Lipowax and Lipocol in skin care compositions is a common practice in the art (note the abstract, columns 5 and 6).

Fowler teaches that the addition of components such as sun screens, humectants, eugenol, stearic acid and emulsifiers such in skin care compositions is a common practice in the art (note the abstract and examples).

The inclusion of components such as emollients and others not taught by Stavroff would have been obvious to one of ordinary skill in the art since these are commonly used components in skin care preparations as taught by Steward, Epstein and Fowler and one would expect the best possible results by adding these components.

7. Claims 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stavroff cited above, further in view of Steward (5,922,313) and Eppstein (5,885,593) and Fowler (5,720,961) as set forth above, in combination with Chodosh (5,827,870).

Stavroff, Steward, Eppstein and Fowler do not teach the addition of pumice in the compositions.

The reference of Chodosh which discloses an antimicrobial composition teaches that the addition of pumice in body scrubs is a routine practice in the art (note col. 5, lines

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62-65). The addition of other scrubbing agents expecting the additional exfoliating effect would have been therefore, obvious to one of ordinary skill in the art.

ELECTION

8. This application contains claims directed to the following patentably distinct species of the claimed invention: a) composition in claims 1-9 and 11-13; b) composition in claim 10; c) composition in claims 14-19 and d) composition in claim 20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is

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more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.



Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

February 22, 2000